

**KENTUCKY DEPARTMENT OF EDUCATION
DIVISION OF FACILITIES MANAGEMENT
AMENDMENT TO
INSTRUCTIONS TO BIDDERS
AIA A701-1997**

ARTICLE 1 DEFINITIONS

- 1.1.1** Insert a new paragraph: "The Bidding Requirements and the proposed Contract Documents shall include the current applicable editions of the standard forms published by the American Institute of Architects, with a corresponding Amendment issued by the Kentucky Department of Education, Division of Facilities Management."
- 1.5** Revise the paragraph to read: "The Base Bid is the sum stated in the Form of Proposal for which..."

ARTICLE 3 BIDDING DOCUMENTS**3.4 ADDENDA**

- 3.4.1** Revise the paragraph to read: "...to all who are known by the Architect to have received..."

ARTICLE 4 BIDDING PROCEDURES**4.1 PREPARATION OF BIDS**

- 4.1.1** Add the sentence: "At each occurrence throughout the Bidding Requirements, replace the words 'bid form', with 'Form of Proposal'."
- 4.2.1** Revise the paragraph to read: "Each Bid shall be accompanied by a bid security in the form of a Bond provided by a Surety Company authorized to do business in the Commonwealth of Kentucky, or in the form of a certified check, and in an amount equal to at least 5% of the Bid amount, pledging that the Bidder will enter into a contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payments of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. "
- 4.2.2** Revise sentence to read: "The Surety Bond shall be written on AIA Document A310, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney."

4.3 SUBMISSION OF BIDS

- 4.3.1** Delete the phrase "if any" after the word "security".
- 4.3.2** Add to first sentence: "as indicated in the Advertisement or Invitation to Bid or any extensions thereof made by Addendum."

Revise the last sentence to read: "Any Bids received after the closing time and date for receipt and opening of Bids will be rejected and returned to the Bidder unopened."

4.4 MODIFICATION OR WITHDRAWAL OF BID

- 4.4.4 Revise paragraph to read: "Bid Security in the minimum amount of 5% of the Bid shall be sufficient for the Bid as modified or resubmitted."

ARTICLE 5 CONSIDERATION OF BIDS

5.1 OPENING OF BIDS

Delete last sentence in its entirety.

5.3 Acceptance of Bid (Award) [REFERENCE: KRS 45A.365]

ARTICLE 6 POST BID INFORMATION

6.1 CONTRACTOR'S QUALIFICATION STATEMENT

- 6.1.2 Add the following paragraph: "In determining the qualifications and responsibilities of the bidder, the Owner shall take into consideration the Bidder's skill, experience, facility, previous work standing, financial standing, capacity and ability to handle work in addition to that in progress, and quality and efficiency of construction plant and equipment proposed to be utilized on the project."

6.2 OWNER'S FINANCIAL CAPABILITY

Delete the entire paragraph.

6.3 SUBMITTALS

- 6.3.1 Revise the paragraph to read: "Each bidder shall submit as part of the Form of Proposal a listing of unit prices and a list of subcontractors or material suppliers proposed for each major branch of work itemized and described in the specifications for the Project."
- .1 The listing of the bidder as the subcontractor for a work category certifies that the bidder has in current employment, skilled staff and necessary equipment to complete that category. The architect/engineer will evaluate the ability of all listed subcontractors to complete the work and notify the owner. Listing of the bidder as the subcontractor may invalidate the bid should the architect's review indicate bidder does not have skilled staff and equipment to complete the work category at the time the bid was submitted."

6.4 LIST OF MATERIALS AND EQUIPMENT

- 6.4.1 Add paragraph: "Each bidder shall submit a complete list of materials and equipment by manufacturer's name, brand and/or catalogue number in the form and manner specified on the Form of Proposal in complete conformance with materials and equipment specified."
- 6.4.2 Add paragraph: "In addition to the list furnished with the proposal, the successful bidder thereafter known as the Contractor, may be requested within thirty (30) calendar days after award of contract to furnish to the Architect a more detailed and complete list of the materials and equipment, together with the manufacturer's or maker's name, brand and/or catalogue number and a catalogue cut or illustration thereof."
- 6.4.3 Add paragraph: "Prior to the award of contract, the Architect will make a preliminary check of the lists included with the bid and advise the bidder through the Owner of the acceptance thereof, and of such other actions as may be necessary in order to meet the requirements of the contract specifications. Should it develop that any of the materials or equipment named in the list do not meet the requirements and intent of the specifications, the bidder shall be required to offer to the Owner other materials or equipment acceptable under the specifications at no change in contract price. Preliminary review and acceptance of the above list shall not relieve the Contractor of furnishing equipment and materials in complete accordance with the specifications."

- 6.4.4 Add paragraph: "Written approval shall be obtained from the Architect covering any substitution. Substitutions are permitted in the following instance:
- (1) Failure to meet quality and intent of specifications;
 - (2) Failure of the supplier or manufacturer to meet delivery schedules or other conditions of the contract;
 - (3) Written release by the supplier or manufacturer."
- 6.4.5 Add paragraph: "The Owner reserves the right to reject the bid of any bidder who fails to furnish the above information as required under Article 6.3 and 6.4."
- 6.5 UNIT PRICES**
- 6.5.1 Add paragraph: "Each bidder shall submit as a part of the bid proposal a list of unit prices as designated on the Form of Proposal."
- 6.5.2 Add paragraph: "Unit prices are for changing or adjusting the scope or quantity of work from that indicated by the contract drawings and specifications."
- 6.5.3 Add paragraph: "The unit prices shall include all labor, materials, equipment, appliances, supplies, overhead and profit."
- 6.5.4 Add paragraph: "Only a single unit price shall be given and it shall apply for either more or less work than that shown on the drawings and called for in the specifications. In the event the contract is required to be adjusted by unit prices, a change order shall be issued for the change and for the increased or decreased amount."
- 6.5.5 Add paragraph: "Unit prices turned in by the bidder shall apply to all phases of the work whether the work be performed by the bidder or by the bidder's (contractor's) subcontractors."
- 6.5.6 Add paragraph: "For unit prices that apply to a lump sum base bid, the Owner reserves the right, prior to an award of contract, to negotiate, adjust and/or reject any price that is determined by the Architect or Owner to be excessive or unreasonable in amount."
- 6.5.7 Add paragraph: "On line item total sum bids where bidders are quoting firm unit prices for estimated quantities of units of work, the unit price is the bid and is not subject to change, either by the bidder or Owner. The Owner reserves the right to correct mathematical errors in extensions and additions by the bidder. The Owner's corrected bid sum total shall take preference over the bidder's computed bid sum total."

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

7.1 BOND REQUIREMENT

- 7.1.1 Revise the last sentence to read: "Bonds shall be executed by a surety company authorized to do business in Kentucky."

7.2 TIME OF DELIVERY AND FORM OF BONDS

- 7.2.2 Revise the last sentence to read: "Unless otherwise provided, both bonds shall be written in the amount of the Contract Sum."

ARTICLE 9 AWARD OF CONTRACT

9.1 CONTRACT APPROVAL

- 9.1.1 An award of contract is contingent upon securing an acceptable bid within the amount of funds available.
- 9.1.2 Owner-Contractor Agreements shall be valid only after written notice by the Department of Education, Division of Facilities Management that the proposed construction agreement is approved.

ARTICLE 10 PUBLIC WORKS ACT [REFERENCE: KRS 337.505–337.550]

10.1 LABOR REGULATIONS

- 10.1.1 Work shall be performed in compliance with applicable provisions of the Kentucky Prevailing Wage Act on Public Works Projects (KRS 337.505 thru KRS 337.550).
- 10.1.2 Any bidder and/or subcontract bidder in violation of any wage or work act provision (KRS 337.510 to KRS 337.550) and under citation by the Kentucky Department of Labor is prohibited by KRS 337.990 from bidding on or working on any and all public works contracts either in their name or in the name of any other company, firm, or other entity in which there is vested interest. No bid shall be submitted by a prime bidder or sub-bidder in violation of KRS Chapter 337. The responsibility of the qualifications of the sub-contract bidder is solely that of the prime bidder. The rejection of the subcontract bidder and re-submittal of a qualified subcontract bidder will be handled per the provisions of these "Instructions" relating to subcontract bidders and materials.

10.2 PREVAILING WAGE RATES

Prevailing wage rates, included with the Supplementary Conditions, shall be paid on this project. The stipulated wage rates represent prevailing minimum wage rates of pay allowable and shall not be construed to mean that higher rates may not have to be paid in order to secure labor.

ARTICLE 11 TAXES

11.1 KENTUCKY SALES AND/OR USE TAX

- 11.1.1 Bidders are informed that construction contracts of the Commonwealth of Kentucky and political subdivisions are not exempt from the provisions of the Kentucky Sales and/or Use Tax. Current sales and/or Use Tax shall be provided for and included in the bid amount as no adjustments will be permitted nor made after receipt of bids.

11.2 FEDERAL EXCISE TAX

- 11.2.1 The Commonwealth of Kentucky and its political subdivisions are exempt from Federal Excise Tax.

ARTICLE 12 POST BID REVIEW AND MATERIAL SUBMITTAL

12.1 REPRESENTATIVE AT BID OPENING

- 12.1.1 Each prime bidder shall have an authorized representative at the bid opening for submittal of the list of materials and equipment, and the post bid review which follows immediately after the opening and reading of bids.
- 12.1.2 Unless otherwise provided, the apparent low bidder, if requested, shall submit a completed list of materials and equipment within one (1) hour from the close of the reading of the bids. The list of materials and equipment shall be that designated listing contained in the Form of Proposal.

- 12.1.3 The post bid review will be conducted jointly with representatives of the Architect, Owner, and apparent low bidder. Preliminary review will be directed toward bidder's qualifications, unit prices, list of subcontractors, and list of materials.

ARTICLE 13 EQUAL EMPLOYMENT AND NONDISCRIMINATION

13.1 GENERAL POLICY

- 13.1.1 The Commonwealth of Kentucky and its political subdivisions are committed to equal job opportunities on public contracts and prohibited from discrimination based on race, creed, color, sex, age, religion, or national origin.

ARTICLE 14 CONFLICT OF INTEREST, GRATUITIES & KICKBACKS, USE OF CONFIDENTIAL INFORMATION (KRS 45A.455)

Conflict of Interest, Gratuities, Kickbacks, and Use of Confidential Information as described in KRS 45A.455 are expressly prohibited. Penalties for any violation under this statute are located in KRS 45A.990.

END OF AMENDMENT

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